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SERIAL NO.: 09/618,500

OUR FILE NO.: RPC 0515 PUS

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re application of: JOHN A. HAGAN

Serial No.: 09/618,500

Examiner: S. Castellano

Filed: July 18, 2000

Art Unit: 3727

For: CONTAINER

Attorney Docket No.: RPC 0515 PUS

**PETITION TO WITHDRAW NOTICE OF NON-COMPLIANCE**Commissioner for Patents  
U.S. Patent & Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Appellant requests the withdrawal of the Notice of Non-Compliance mailed October 4, 2004.

**Brief Summary of Relevant Facts**

On December 9, 2003, Appellant filed a Notice of Appeal.

On April 12, 2004, Appellant filed an Appeal Brief.

On October 4, 2004, the Examiner mailed a Notice of Non-Compliance with the following objections:

Item 5: Issue 1 and issue 2 state "unpotentable over" rather than "anticipated by."

Item 7: Issues 4 and 5 pertaining to claims 15 and 16 are not argued under a separate heading as the main argument is the same and appears under the heading for issue 2 for claim 14.

Note: The rules for filing a brief have changed as of September 13, 2004. File the brief in accordance with the new rules.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit: 3727

**CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. § 1.8**

I hereby certify that this paper, including all enclosures referred to herein, is being facsimile transmitted to Technology Center 3700, U.S. Patent & Trademark Office, at (703) 872-9306 on:

October 27, 2004  
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Stephanie M. Mansfield  
Name of Person Signing

  
Signature

Serial No.: 09/618,500

Atty Docket No.: RPC 0515 PUS

### **Argument and Request for Relief**

#### **Introduction**

None of these objections by the Examiner merit rejection of Appellant's Appeal Brief and further delay of review of the patentability of Appellant's patent application. Although the objections could be addressed in a Substitute Appeal Brief, Appellant requests intervention in this matter due to this Examiner's repeated unfair treatment of Appellant's patent applications (*see, for example*, Decisions on Petitions, Exhibit A).

#### **Item 5**

The Examiner objects to Appellant's use of the phrase "unpatentable over" as opposed to "anticipated by" in issues 1 and 2 which involve rejections under 35 U.S.C. § 102(b) (*see* Appeal Brief, p. 4, Exhibit B). Appellant asserts that issues 1 and 2 are perfectly clear as presented, since the statute is included in the statement of each issue. In fact, the examples cited in M.P.E.P. § 1206 each include the language of "[w]hether claims 1 and 2 *are unpatentable...*" (emphasis added) regardless of the particular statute under which the claims are rejected (*see* Exhibit C). In compliance with 37 C.F.R. § 1.192(c)(6), Appellant has properly provided a concise, accurate statement of the issues presented for review. The Examiner's objection to the specific wording of issues 1 and 2 is not an appropriate ground for deeming Appellant's Brief to be non-compliant.

#### **Item 7**

The Examiner states that issues 4 and 5 pertaining to claims 15 and 16, respectively, are not properly argued under a separate heading since the main argument is the same as that of claim 14 which appears under the heading for issue 2. Independent claim 14 stands rejected under 35 U.S.C. § 102(b) over Cloyd, whereas claims 15 and 16 depending therefrom are each separately rejected under 35 U.S.C. § 103(a) over a combination of Cloyd in view of one or more references. Pursuant to 37 C.F.R. § 1.192(c)(8), since claims 15 and 16 are rejected under different grounds than claim 14 and therefore properly presented as different issues, the arguments with respect to claims 15 and 16 are properly set out with separate headings (*see* Appeal Brief, pp. 15-16, Exhibit D). However, no additional arguments regarding either claim 15 or claim 16 are necessary beyond that presented for claim 14 under

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its heading, as Appellant has chosen to rely upon the argument for the patentability of claim 14 in asserting the patentability of claims 15 and 16 depending therefrom. The argument for claim 14 is clearly referenced under the headings for both claims 15 and 16, and thus provides the Board with a record that it can examine as efficiently as possible. The Examiner's insistence that the argument for claim 14 be reprinted three separate times actually makes the review process less efficient and is not a proper ground for rejection of Appellant's Brief.

### New Rules

In the Notice of Non-Compliance, the Examiner instructs Appellant to "file the brief in accordance with the new rules." Even if Appellant were to file a Substitute Brief, this instruction by the Examiner is incorrect. With reference to the PTO Pre-OG Notice entitled "Clarification of the Effective Date Provision in the Rules of Practice before the Board of Patent Appeals and Interferences (Final Rule), Appellant has the option of complying with either the new or old rules in the present situation (*see* Exhibit E). Specifically:

Question 6. If an appeal brief filed before the effective date of September 13, 2004 fails to comply with the content and format requirements of § 1.192 and the Office mails appellant a Notice that correction is required, would an amended appeal brief filed on or after the effective date be required to be in compliance with § 41.37(c)?

No, an amended appeal brief, based on an appeal brief originally filed prior to September 13, 2004, would be acceptable if it complies with either former § 1.192 or § 41.37(c), regardless of when the Office mailed a Notice requiring correction of the noncompliant appeal brief.

No fee should be due in connection with this paper. However, if any fees are due, please charge our Deposit Account 02-3978.

Respectfully submitted,

JOHN A. HAGAN

By: Stephanie M. Mansfield  
Stephanie M. Mansfield; Reg. No. 43,773  
Attorney/Agent for Applicant

Date: October 27, 2004

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 In re Application of  
 Gerald R. Koefelda et al  
 Application No. 09/571,425  
 Filed: May 15, 2000

FEB 19 2003

Paper No. 18

DECISION ON PETITION

Attorney Docket No. RPC 0493 PUS

Due: 3-12-03

This is a decision on the petition filed on January 21, 2003 by which petitioners request supervisory review of the examiner's action regarding the appeal brief and examiner's answer in this application. The petition is considered pursuant to 37 CFR 1.181, and no fee is required. A refund of the \$130.00 petition fee tendered with the petition will be credited to Deposit Account No. 50-1964.

The petition is granted.

Appellants' brief on appeal was timely filed on October 25, 2002. The examiner felt that the appeal brief did not adequately address the matter of which claims on appeal stood together and which did not as required by 37 CFR 37 CFR 1.192(c)(7 and 8) and as discussed at MPEP § 1206. The examiner then promulgated an examiner's answer in which it is declared that all of the appealed claims "stand or fall together."

A review of the appeal brief shows that there is some ambiguity if the "Grouping of Claims" section on page 3 of the appeal brief is read literally and without reference to the arguments presented later in the appeal brief. However, it was improper for the examiner to take the action that he did. As discussed in MPEP § 1206, 37 CFR 1.192(d) states, *inter alia*,

"If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and provide with a period of one month with which to file an amended brief." (Emphasis supplied.)

Given that the appeal brief is, at worst, ambiguous on the matter of claims standing or falling together, the examiner should have prepared form PTOL-462, "Notification of Non-Compliance With 37 CFR 1.192(c)", explaining the deficiency and offering appellant the one month period of time to correct the problem.

Accordingly, the examiner's answer dated November 14, 2002, paper No. 15, is hereby VACATED. Therefore, the reply brief attached to the instant petition will not be entered. Petitioners are given a period of ONE MONTH or THIRTY DAYS from the mailing date of this Decision, whichever is longer, in which to file a corrected appeal brief in triplicate. This period may be extended pursuant to 37 CFR 1.136. Failure to timely file the corrected appeal brief in triplicate will result in dismissal of the appeal. After the corrected appeal brief is filed, the examiner will treat this application as special and prepare an examiner's answer addressing the corrected appeal brief, or take such other action as may be appropriate.

The application is being forwarded to the Supervisory Patent Examiner of Art Unit 3727 who should see that the above mentioned refund is made.

PETITION GRANTED.

E. Rollins Cross, Director, Patent  
Examining Groups 3710 and 3720

BROOKS & KUSHMAN  
1000 TOWN CENTER 22ND FL  
SOUTHFIELD, MI 48076

EXHIBIT A

(Page 2 of 3)



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UNITED STATES PATENT AND TRADEMARK OFFICE  
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OCT -7 2003

Paper No. 12

In re Application of  
William Apps *et al*  
Application No. 09/977,636  
Filed: September 15, 2001  
Attorney Docket No. RPC 0554 PUS

: DECISION ON PETITION

RECEIVED  
REHRIG PACIFIC COMPANY

OCT 14 2003

This is a decision on the petition originally filed by facsimile transmission on August 27, 2003 and subsequently resubmitted. The duplicate submission has been discarded, see 37 CFR 1.4(b). In the petition, petitioners request withdrawal of the holding that this application stands abandoned for failure to timely file a reply to the Office letter dated August 16, 2002. No fee is required for the petition.

The petition is granted.

Petitioner alleges that the application is not abandoned because a reply to the Office letter in question was in fact filed, together with the appropriate petition for a three month extension of time and the fee therefor. The reply and extension are in fact of record in the file, and bear a filing date of March 4, 2003 and a 37 CFR 1.8(a) certificate of mailing dated February 19, 2003. As February 17, 2003 was a holiday in the District of Columbia, and as the Office was closed on February 18, 2003 due to a snow emergency, the reply and extension were in fact filed on the next available business day after the due date of February 16, 2003 and were timely filed. Therefore, it is clear that the application is not in fact abandoned.

Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the Supervisory Patent Examiner of Art Unit 3727 who will insure that the examiner takes the application up for action as the next application acted upon.

PETITION GRANTED.

E. Rollins-Cross, Director, Patent  
Examining Groups 3710 and 3720

Konstantine J. Diamond  
4010 E. 26th Street  
Los Angeles, CA 90023

EXHIBIT A  
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According to a third embodiment of the present invention, a container (210) is provided which is adapted to receive an inner receptacle arranged to hold merchandise therein. The container (210) includes a base (212) including a peripheral frame portion (230), and a first pair of opposed walls (214, 216) integrally formed with and extending upwardly from the peripheral frame portion (230). In addition, a second pair of opposed walls (218, 220) is integrally formed with and extends upwardly from the peripheral frame portion (230) and is integrally formed with the first pair of opposed walls (214, 216), where the first and second pairs of opposed walls (214, 216, 218, 220) and the base (212) define a compartment area (222) for removably receiving and supporting the inner receptacle therein (*see*, for example, p. 15, line 28 - p. 16, line 20; FIGS. 21-24).

#### VI. ISSUES

1. Whether claims 14-16 and 18-23 are unpatentable over U.S. Patent No. 2,395,542 issued to Fordon ("Fordon") under 35 U.S.C. § 102(b).
2. Whether claim 14 is unpatentable over U.S. Patent No. 3,973,692 issued to Cloyd ("Cloyd") under 35 U.S.C. § 102(b).
3. Whether claims 1-9, 12-13, and 24-32 are unpatentable over Fordon in view of U.S. Patent No. 6,015,036 issued to Overholt ("Overholt") under 35 U.S.C. § 103(a).
4. Whether claim 15 is unpatentable over Cloyd in view of U.S. Patent No. 3,796,342 issued to Sanders ("Sanders") under 35 U.S.C. § 103(a).
5. Whether claim 16 is unpatentable over Cloyd in view of Sanders and further in view of Fordon under 35 U.S.C. § 103(a).

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## MANUAL OF PATENT EXAMINING PROCEDURE

disagreement on these questions to be resolved before the appeal is taken up for decision by the Board.

(5) *Summary of Invention.* A concise explanation of the invention defined in the claims involved in the appeal. This explanation is required to refer to the specification by page and line number, and, if there is a drawing, to the drawing by reference characters. Where applicable, it is preferable to read the appealed claims on the specification and any drawing. While reference to page and line number of the specification may require somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application.

(6) *Issues.* A concise statement of the issues presented for review. Each stated issue should correspond to a separate ground of rejection which appellant wishes the Board of Patent Appeals and Interferences to review. While the statement of the issues must be concise, it should not be so concise as to omit the basis of each issue. For example, the statement of an issue as "Whether claims 1 and 2 are unpatentable" would not comply with 37 CFR 1.192(c)(6). Rather, the basis of the alleged unpatentability would have to be stated, e.g., "Whether claims 1 and 2 are unpatentable under 35 U.S.C. 103 over Smith in view of Jones," or "Whether claims 1 and 2 are unpatentable under 35 U.S.C. 112, first paragraph, as being based on a nonenabling disclosure." The statement would be limited to the issues presented, and should not include any argument concerning the merits of those issues.

(7) *Grouping of Claims.* For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone, unless a statement is included that the claims of the group do not stand or fall together and, in the argument section of the brief (37 CFR 1.192(c)(8)), appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable. If an appealed ground of rejection applies to more than one claim and appellant considers the rejected claims to be separately patentable, 37 CFR 1.192(c)(7) requires appellant to state that the claims

do not stand or fall together, and to present in the appropriate part or parts of the argument under 37 CFR 1.192(c)(8) the reasons why they are considered separately patentable.

The absence of such a statement and argument is a concession by the applicant that, if the ground of rejection were sustained as to any one of the rejected claims, it will be equally applicable to all of them. 37 CFR 1.192(c)(7) is consistent with the practice of the Court of Appeals for the Federal Circuit indicated in such cases as *In re Young*, 927 F.2d 588, 18 USPQ2d 1089 (Fed. Cir. 1991); *In re Nielson*, 816 F.2d 1567, 2 USPQ2d 1525 (Fed. Cir. 1987); *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986); and *In re Sernaker*, 702 F.2d 989, 217 USPQ 1 (Fed. Cir. 1983). 37 CFR 1.192(c)(7) requires the inclusion of reasons in order to avoid unsupported assertions of separate patentability. The reasons may be included in the appropriate portion of the "Argument" section of the brief. For example, if claims 1 to 4 are rejected under 35 U.S.C. 102 and appellant considers claim 4 to be separately patentable from claims 1 to 3, he or she should so state in the "Grouping of claims" section of the brief, and then give the reasons for separate patentability in the 35 U.S.C. 102 portion of the "Argument" section (i.e., under 37 CFR 1.192(c)(8) (iii)).

In the absence of a separate statement that the claims do not stand or fall together, the Board panel assigned to the case will normally select the broadest claim in a group and will consider only that claim, even though the group may contain two broad claims, such as "ABCDE" and "ABCDEF." The same would be true in a case where there are both broad method and apparatus claims on appeal in the same group. The rationale behind the rule, as amended, is to make the appeal process as efficient as possible. Thus, while the Board will consider each separately argued claim, the work of the Board can be done in a more efficient manner by selecting a single claim from a group of claims when the appellant does not meet the requirements of 37 CFR 1.192(c)(7).

It should be noted that 37 CFR 1.192(c)(7) requires the appellant to perform two affirmative acts in his or her brief in order to have the separate patentability of a plurality of claims subject to the same rejection considered. The appellant must (A) state that the claims do not stand or fall together and (B) present arguments why the claims subject to the same rejection

August 2001

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EXHIBIT C

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Fordon teaches away from any type of releasable attachment of frames 9, 13. It is an object of Fordon's invention to have walls which swing outwardly to an inclined nesting position, and straps 22 provide the *non-releasable attachment* between frames 9 and 13 required to limit the outward movement of frames 9, 13 and create a stable nesting position so that Fordon's container can support an upper like container therein in a nested configuration (*see* Fordon, col. 2, lines 47-51; FIG. 6).

Furthermore, with respect to claim 24 (Group D), Fordon teaches away from the use of a releasable flange connection on frames 9 or 13 in place of non-releasable straps 22. First, a flange and its latch-type connection would not limit the outward swing of frames 9, 13 and therefore not provide any nesting capability for Fordon's containers. Even if a limited outward swing of frames 9, 13 were assumed, inwardly depending flanges provided on end frames 13 would prohibit nesting of Fordon's containers, as the end frames 13 of the upper container would no longer abut the end frames 13 of the lower container as shown in FIG. 6, but rather bottom frame 1 would likely abut the inwardly depending flanges such that an upper container could not be substantially received in a lower container in a nested configuration.

For all of the foregoing reasons, independent claims 1 (Group C) and 24 (Group D), along with their corresponding dependent claims, are patentably distinguishable over the combination of the Fordon and Overholt references. Because Group D recites a collapsible container where the first pair of opposed walls include a flange depending inwardly therefrom, which is not recited by the claims of Group C, the claims of Group D are patentable independently of the claims of Group C.

**D. Rejection of Claim 15**

**Under 35 U.S.C. § 103(a) Over Cloyd and Sanders**

Claim 15 depends from and contains all the limitations of independent claim 14. For the reasons described above in *Section B*, claim 14 is believed to be patentably

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EXHIBIT D

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distinguishable over Cloyd, either alone or in combination with Sanders. Accordingly, claim 15 is patentably distinguishable over the cited combination.

**E. Rejection of Claim 16**

**Under 35 U.S.C. § 103(a) Over Cloyd, Sanders, and Fordon**

Claim 16 depends from and contains all the limitations of independent claim 14.

For the reasons described above in *Section B*, claim 14 is believed to be patentably distinguishable over Cloyd, either alone or in combination with Sanders and Fordon. Accordingly, claim 16 is patentably distinguishable over the cited combination.

**Clarification of the Effective Date Provision in the Rules of Practice before the Board of Patent Appeals and Interferences (Final Rule)**

The effective date provision in the Rules of Practice before the Board of Patent Appeals and Interferences (Final Rule) (hereinafter BPAI final rule) states that September 13, 2004 is the effective date. See Rules of Practice Before the Board of Patent Appeals and Interferences (Final Rule), 69 Fed. Reg. 49959 (August 12, 2004). The U.S. Patent and Trademark Office (Office) has received inquiries as to how the effective date provision applies to certain situations. This notice provides clarification as to how the Office is implementing the effective date provision.

Generally, any paper filed by applicants or mailed by the Office on or after September 13, 2004 must comply with the rules as set forth in the BPAI final rule. Appeal briefs filed prior to September 13, 2004 must either comply with former § 1.192 or new § 41.37. A certificate of mailing or transmission in compliance with § 1.8 will be applicable to determine if a paper was filed prior to the effective date of September 13, 2004 in order to determine which rule applies. Examples of certain situations are set forth in the questions and answers below. Additional questions and answers concerning the BPAI final rule are available on the USPTO web site at [www.uspto.gov](http://www.uspto.gov).

**Questions related to Time Periods for Filing of Papers Related to After Final Practice and Ex Parte Appeals:**

**Question 1. If a notice of appeal is filed before September 13, 2004, the effective date of the BPAI final rule, when is the appeal brief due?**

If the notice of appeal is filed before September 13, 2004, the time period for filing an appeal brief will be the time period set forth in former § 1.192(a) which provides that the appellant must file an appeal brief: (1) within two months from the date of filing of the notice of appeal; or (2) within the time allowed for reply to the action from which the appeal was taken, if such time is later.

The time period set forth in former § 1.192(a) also applies if the notice of appeal is filed with a certificate of mailing or transmission in compliance with § 1.8 and the date on the certificate of mailing or transmission is before the effective date of September 13, 2004, but the notice of appeal is received by the Office on or after September 13, 2004. The two month time period will begin on the date of receipt of the notice of appeal.

**Question 2. If appellant reinstates the appeal after the prosecution is reopened by filing a second notice of appeal on or after the effective date, when is the second appeal brief due?**

Appellant must file the second appeal brief (in compliance with the format and content requirements of § 41.37(c)) within two months from the date of filing the second notice of appeal, even if the first notice of appeal and the first brief were filed before the effective date. The two month time period is extendable under the provisions of § 1.136 for patent applications and § 1.550(c) for *ex parte* reexamination proceedings. See § 41.37(e).

EXHIBIT E  
(Page 1 of 4)

**Question 3. If a notice of appeal is filed on or after the effective date of September 13, 2004, would extensions of time under § 1.136(a) be required when a Request for Continued Examination (RCE) under § 1.114 or an amendment is filed after two months from the date of filing the notice of appeal, but within three months from the mailing of the action from which the appeal was taken?**

Yes, extensions of time under § 1.136(a) are required for filing an RCE or amendment after two months from the filing of the notice of appeal, even if the RCE or amendment is filed within the three months from the mailing of the action from which the appeal was taken.

**Questions related to Appeal Brief Contents or Requirements for Papers Filed after Appeal:**

**Question 4. If the notice of appeal is filed before the effective date of September 13, 2004 and the brief is filed by appellant on or after the effective date, would the appeal brief be required to comply with the content and format requirements of § 41.37(c)?**

Yes, any appeal brief filed on or after September 13, 2004 must be in compliance with the requirements set forth in § 41.37(c) and be accompanied by the appropriate fee under § 41.20(b)(2). If the brief does not comply with § 41.37(c), an amended brief will be required under § 41.37(d).

**Exception:** If the appeal brief is filed with a certificate of mailing or transmission under § 1.8 and the date on the certificate of mailing or transmission is before September 13, 2004, the appeal brief may comply with either former § 1.192 or new § 41.37, even if the appeal brief is received by the Office on or after September 13, 2004.

**Question 5. Would the Office accept an appeal brief filed before the effective date of September 13, 2004 that is in compliance with § 41.37(c)?**

Yes, a brief filed before September 13, 2004 that is compliant with the new § 41.37(c) will be acceptable.

**Question 6. If an appeal brief filed before the effective date of September 13, 2004 fails to comply with the content and format requirements of § 1.192 and the Office mails appellant a Notice that correction is required, would an amended appeal brief filed on or after the effective date be required to be in compliance with § 41.37(c)?**

No, an amended appeal brief, based on an appeal brief originally filed prior to September 13, 2004, would be acceptable if it complies with either former § 1.192 or § 41.37(c), regardless of when the Office mailed a Notice requiring correction of the noncompliant appeal brief.

EXHIBIT E  
(Page 2 of 4)

**Question 7. If, after a final rejection or an appeal, applicant or appellant filed an amendment, affidavit or other evidence on or after the effective date, will the revised or new rules in the BPAI final rule apply?**

Any affidavit or other evidence filed after a final rejection, or an appeal, on or after the effective date, will be subject to the revised or new rules (*i.e.*, the revised § 1.116 or new § 41.33).

**Questions related to Examiner's Answers and Supplemental Examiner's Answers:**

**Question 8. If the appeal brief is filed before the effective date of September 13, 2004, but the examiner's answer is mailed on or after the effective date, can the examiner's answer include a new ground of rejection?**

Yes, an examiner's answer mailed on or after September 13, 2004 may include a new ground of rejection (with Technology Center Director or designee approval) in compliance with § 41.39. Any examiner's answer mailed before September 13, 2004, however, may not include a new ground of rejection. See former § 1.193.

**Question 9. Can the examiner provide a supplemental examiner's answer under § 41.43 on or after the effective date of September 13, 2004 in response to any new issue raised in a reply brief that was filed before the effective date?**

Yes, the examiner may provide a supplemental examiner's answer (with Technology Center Director or designee approval) if it is mailed on or after September 13, 2004 in response to any new issue raised in a reply brief, even if the reply brief was filed before September 13, 2004. Appellant may file another reply brief in compliance with § 41.41 to reply to the supplemental examiner's answer within two months from the date of mailing of the supplemental examiner's answer. Extensions of time under § 1.136(a) are not applicable to the two-month time period.

**Question 10. If the Board remanded an application before the effective date of September 13, 2004 for further consideration of a rejection, and the examiner provides a supplemental examiner's answer on or after the effective date (in response to the remand by the Board), can appellant request that prosecution be reopened under § 41.50(a)(2)(I)?**

No, appellant may not request that prosecution be reopened under § 41.50(a)(2)(i) in response to the supplemental examiner's answer since the Board remanded the application before the effective date. Appellant may request that prosecution be reopened in response to a supplemental examiner's answer written in response to the remand by the Board, only if: (1) the remand is on or after the effective date, and (2) the remand is for further consideration of a rejection. The Board should indicate in the remand if § 41.50(a)(2)(i) applies. Thus, appellant may not request that prosecution be reopened under § 41.50(a)(2)(i) if the remand is for another reason.

EXHIBIT E  
(Page 3 of 4)

**FOR FURTHER INFORMATION CONTACT: Kery Fries, Senior Legal Advisor in the Office of Patent Legal Administration, by telephone at (703) 308-6906 or (571) 272-7704 on or after September 29, 2004, or by e-mail addressed to Kery.Fries@USPTO.gov.**

**/s/ Robert J. Spar, for**  
**Stephen G. Kumin**  
**Deputy Commissioner**  
**for Patent Examination Policy**

**EXHIBIT E**  
**(Page 4 of 4)**

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